Supreme Court, U.S.
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No. 10-556

In The
Supreme Court of the United States

SURESH BADRINAUTH,

Petitioner,

v.

METLIFE CORPORATION; VIRGEL AQUINO,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR REHEARING

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. PETITION FOR REHEARING 1

II. DISCUSSION 1

A. The decision by Associate Justice Samuel Alito to NOT recuse himself, when there was a profound and proven conflict of interest, contaminated the Court's decision to deny certiorari on December 13, 2010 1

B. Chief Justice Roberts' 2010 year-end report, on the necessity and importance of confirming federal judges, mandates that the court hear this very issue, which is presented in this petition 2

C. This court's function to remand cases that have (ten) egregious and axiomatic errors, begs for this action to be taken in this petition 4

TABLE OF AUTHORITIES

Page

CASES

Ambler v. Whipple, 90 U.S. 278 (1875) 2

Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960) 2

Offutt v. United States, 348 U.S. 11, 75 S.Ct. 11 (1954) 2

I. PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, petitioner Suresh Badrinauth respectfully petitions the Court for rehearing of its decision on December 13, 2010.

II. DISCUSSION

A. One of the Appellate Judges at the Third Circuit Court of Appeals who ruled on this case is Judge Leonard Garth. Associate Justice Samuel Alito of this Court clerked for Judge Garth for several years. After Justice Alito was confirmed as an appellate Judge, he worked with Judge Garth for many more years. At Justice Alito's confirmation before the senate, Judge Garth appeared and passionately pleaded for Justice Alito, and the two of them have since remained close friends.

Justice Alito does not participate in the "cert pool", and thus his office is cognizant and aware of the pleadings and intricacies of *every* petition presented before this court. Therefore, Justice Alito was aware that this case emerged out of the chambers of his mentor Judge Garth (and the subsequent complaint filed against him), and to preserve the integrity of this court should have immediately recused himself from any discussions. Every week, this Court released orders that are replete with Justices recusing or not participating in the decisions and outcome of cases. The Court's order list of December 13, 2010 lists several other Justices recusing themselves from other cases for matters less egregious and

conflicting that Justice Alito and his relationship with the ruling lower court Judge on this case. In *Ambler v. Whipple,* 90 U.S. 278, 282 (1875): "*If the omissions . . . on which the case was heard are material to the decision of the case, it presents a strong appeal for reargument.*"

In order to maintain the reputation, integrity and the appearance of fairness, this Court must rehear this case without the input or participation of Justice Alito. U.S. Supreme Court Justice the Honorable Felix Frankfurter said in his opinions regarding *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954) and *Levine v. United States,* 362 U.S. 610, 80 S.Ct. 1038 (1960) that "**justice must satisfy the appearance of justice**."

Without a rehearing, and a recusal by Justice Alito the denial of Certiorari by this court on December 13, 2010 will result in an injustice which was compounded by an appearance of injustice. Indeed!!

B. Chief Justice of the United States John Roberts, focused part of his annual 2010 year-end report on the problem he sees hampering the judicial branch: political intransigence in confirming federal judges. Judge Roberts sees this as one "immediate obstacle" to improve the performance of the federal judiciary.

Chief Justice Roberts believes the process of nominating and confirming federal judges has become a persistent problem. Chief Justice Roberts wrote, "Each political party has found it easy to turn on a

dime from decrying to defending the blocking of judicial nominations, depending on their changing political fortunes."

Statistics from the Federal Judicial Center show that more than 10% of the 876 federal judgeships are vacant. "This has created acute difficulties for some judicial districts. Sitting judges in those districts have been burdened with extraordinary caseloads," Roberts added.

In July, American Bar Association President Carolyn Lamm said the problem affects the efficiency and fairness of the judicial system. "We have speedy trial rules that require [judges] to put criminal cases first. As a result, all of the civil proceedings are put off and there is a real gap in terms of a significant delay as a result of the vacancies. It is edging toward a crisis not to have a full bench.

The real tragedy here is that legal scholars, attorneys and law professors do not expect that there will be any action to the Chief Justice's admonition or pleadings in his year-end report. Chief Justice John Roberts has the ability to act unilaterally, to ensure compliance of litigants' rights of due process guaranteed under the Constitution. Also, the willful delay and or denial in the confirmation of federal judges violates the Constitution's guarantee of expeditious trials.

This very issue is raised in the first two questions presented in this petition. **And if Chief**

Justice Roberts is indeed serious and truly wants to serve the American people - - - this petition gives him an opportunity to do, by enacting a statute that restates the body of a particular area of law including applicable common law principles and the judicial interpretation of previous or existing statutes.

C. One of the functions of this Court is that when presented with a clear and proven miscarriage of the law . . . is to REMAND the case back to the lower Court for further review. I respectfully submit that this is the situation which this Court is presented with here. Listed below are TEN (10) PROVABLE errors made by the Third Circuit court of appeals.

1. The Third Circuit ruled in defense of the defendants' "policies" which are not known, do not exist and were not presented to the Court.

2. The District Court made at least seven (7) proven errors in this case, many which are not even disputed by the respondents. The three judge panel at the appellate Court did not address this matter in any way, shape or form. This action conflicts with rulings and opinions of similar cases both in this circuit and other Circuits as well.

3. The Appellate Court erred in concluding that temporal proximity was "approximately four month gap," when in fact the record presented in the briefs proves that it was approximately five weeks.

4. The Appellate Court did not find any evidence of causal connection, when the evidence presented in the briefs clearly showed that there were at least FIFTEEN (15) incidents of causal connection.

5. The District Court unilaterally and without prompting or request, recommended how the defendant should proceed by giving them an opportunity to file a second motion for summary judgment. Defendants have also previously filed motions to dismiss on the same issues. And then the court promptly ruled in their favor. Without considering all of the evidence in its superficial judgement (see # 8) the Appellate Court allowed this biased ruling to stand.

6. There were conflicting rulings and opinions by two different judges on the same issue in this case. The appellate Court did not address or consider the detailed and reasoned ruling by the initial judge (Honorable Judge Greenaway Jr.) who has spent much longer on the case than the final ruling judge.

7. In every Pro Se Petitioner case presented before the Third Circuit (and other Circuits), the subsequent opinion always acknowledge the petitioner is proceeding . . . pro se. In the Court's opinion of this case dated March 09, 2010, nowhere is any acknowledgement that the petitioner is proceeding pro se.

8. The appellate court in its "plenary" ruling considered nearly seven hundred pages of evidence, several lower courts rulings and opinions and also wrote their eight page opinion on the same day.

Reasonable minds would conclude that it is highly unlikely that the appellate Court's opinion could be thorough and fair.

9. Even though the Pro Se Petitioner submitted both the reply brief and accompanying affidavit at the same time, the appellate Court did not consider the affidavit, which contradicted many of the Court's findings.

10. The appellate Court ruled on the admissibility of petitioner's reply affidavit one week AFTER it made its final ruling, even though it was received at least one week before the deadline.

These are all easily proven by simply reading the briefs presented at the appellate Court. We respectfully submit that this should strongly move this court to apply one of the functions it is charged with to ensure that justice is truly served and . . . REMAND the case back to the appellate court for further review.

CONCLUSION

Based upon the foregoing, associate Justice Samuel Alito should have recused himself from all deliberations, the Court should grant the petition for rehearing, vacate the Third Circuit's Opinion of March 09, 2010 and/or remand the case for review at the Appellate Court.

CERTIFICATE OF COUNSEL

As Pro Se Petitioner, I believe this petition for rehearing to be meritorious and hereby certify that this petition is presented in good faith and not for purposes of delay.

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